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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 775

[Docket No. USN-2018-HQ-0001]

RIN 0703-AB01

Policies and Responsibilities for Implementation of the National Environmental Policy Act within the Department of the Navy

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DON) revises portions of its internal regulations that establish the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). An agency may determine that certain classes of actions normally do not individually or cumulatively have significant environmental impacts and therefore do not require further review under NEPA. Establishing these categories of activities, called categorical exclusions (CATEXs), in the agency's NEPA implementing procedures is a way to reduce unnecessary paperwork and delay. This revision clarifies what types of activities fall under CATEXs and normally do not require additional NEPA analysis.

DATES: Effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. J. Dan Cecchini, Office of the Deputy Assistant Secretary of the Navy (Environment), 703-614-1173.

SUPPLEMENTARY INFORMATION:

Process Used by the DON in the Development of the Proposed Revisions

In 2015, the Office of the Deputy Assistant Secretary of the Navy for Environment directed a review of 32 CFR 775.6(e) and (f), which address the DON's procedures for applying CATEXs. A review panel (hereinafter "panel") was formed to provide administrative support and expertise to inform the efforts. The professionals comprising the panel were current DON environmental practitioners with numerous years of NEPA planning and compliance experience, including the preparation of environmental documentation such as CATEX decision documents, environmental assessments (EAs), environmental impact statements (EISs), findings of no significant impact, and records of decision. The panel was supported by a legal working group comprising experienced environmental law attorneys from the DON's Office of the General Counsel and Office of the Judge Advocate General with advanced education and experience providing legal and policy advice to Federal agency decision makers, managers, and practitioners on environmental planning and compliance responsibilities.

The panel reviewed and analyzed the supporting rationale, scope, applicability, and wording of each existing CATEX and extraordinary circumstance set forth in 32 CFR 775.6(e) and (f). The panel developed and deliberated on each proposed new CATEX and extraordinary circumstance change, balancing the resulting increase in administrative efficiency in NEPA implementation and compliance against the risk of misinterpretation and misapplication. During that process, numerous environmental professionals, representing various constituencies within the DON, supported the panel's review and participated in meetings and conference calls over the course of 18 months to reach agreement on the proposed rule (84 FR 12170).

In accordance with Council on Environmental Quality (CEQ) regulations and CEQ's 2010 CATEX guidance, "Establishing, Applying, and Revising Categorical Exclusions under the

National Environmental Policy Act,” the DON substantiated the proposed new and revised CATEXs by reviewing EA and EIS analyses to identify the environmental effects of previously implemented actions; benchmarking other Federal agencies’ experiences; and leveraging the expertise, experience, and judgment of DON professional staff. The panel noted that other Department of Defense (DoD) entities and numerous other Federal agencies have CATEXs for activities that are similar in nature, scope, and impact on the human environment as those undertaken by the DON. The panel reviewed many of those CATEXs before proposing changes to 32 CFR 775.6(e) and (f).

In addition, the panel recognized that all Federal agencies, including the DoD as a whole, with very few limitations, must meet the same requirements to consider environmental issues in decision making with an ultimate goal to protect the environment. Based on experience with, or on behalf of, other Federal agencies, the panel determined that the characteristics of many of the DON’s activities were not significantly different from those performed by other Federal agencies, including other entities within the DoD.

The CEQ was integral in the process to ensure that proposed changes to the DON’s CATEXs meet NEPA requirements. The DON provided the CEQ with proposed draft changes and justifications for each proposed change to 32 CFR 775.6(e) and (f). Many of the changes that the DON is proposing are administrative in nature to clarify application of a particular CATEX. On July 7, 2017, the CEQ concurred with the DON proceeding to rulemaking on these proposed changes.

Summary of Comments and Responses

The DON published the proposed rule (84 FR 12170) on April 1, 2019, and received comments regarding the rule until May 1, 2019. In total, the DON received five (5) comment

submissions on the proposed rule from members of the general public, the Natural Resources Defense Council (NRDC), and Buchalter law firm.

In general, the comments received could be placed into one of four (4) categories: (1) comments beyond the scope of the proposed rule; (2) comments regarding the introductory language change for “extraordinary circumstances” under 32 CFR 775.6(e); (3) comments regarding how the proposed change to 32 CFR 775.6 may interact with the Marine Mammal Protection Act (MMPA); and, (4) comments regarding proposed CATEX #47, which allows for the “modernization (upgrade) of range and training areas, systems, and associated components . . . that support current testing and training levels and requirements.”

Comments Beyond the Scope of the Proposed Rule

The DON received comments expressing disagreement and lack of support for general naval operations, as well as dissatisfaction with Federal protections for marine mammals. The DON also received feedback regarding existing CATEXs, specifically CATEXs #44 and #45 (now numbered #43 and #44 in this final rule). The proposed rule did not change or alter these CATEXs. These comments were deemed to be outside the scope of this rulemaking and are therefore not addressed further.

Modifications to 32 CFR 775.6(e)

The DON received comments expressing concern that the proposed modifications to the text of 32 CFR 775.6(e) would “eliminate” the extraordinary circumstances exception to the use of a CATEX, contravening CEQ guidance. The DON stresses that the proposed changes to the criteria disallowing the application of a listed CATEX (hereafter “extraordinary circumstances”) do not eliminate the requirement to demonstrate that an action has no significant effect on the human environment, either individually or cumulatively, prior to applying a CATEX. Rather,

the rulemaking provides discretion in circumstances where one or more extraordinary circumstances are present but in which only negligible or insignificant impacts are expected. Under this rulemaking, the decision maker may determine that the CATEX is appropriate, notwithstanding the presence of one or more extraordinary circumstances, based on an evaluation of the action's effects in terms of context and intensity. This change aligns with CEQ's 2010 CATEX guidance (page 6) which allows for the consideration of both "the presence of the factor and the impact on that factor." Further, this language mirrors the extraordinary circumstances introductory language already contained in similar NEPA regulations of the U.S. Forest Service and the National Oceanic and Atmospheric Administration (NOAA)'s NEPA manual.

Some commenters also expressed concern that the modifications to 32 CFR 775.6(e) could lead to environmental degradation if the DON sought to apply a CATEX under 32 CFR 775.6(f) to an action which on its face appeared to have negligible impacts, but cumulatively or over time could have more substantial negative environmental impacts. Again, consistent with CEQ guidance, the DON's CATEXs can only be applied to actions that, both individually and cumulatively, have no significant impacts on the human environment. Under the new 32 CFR 775.6(e)(2), if a decision is made to apply a CATEX to a proposed action that is more than administrative in nature, the decision must be formally documented consistent with existing Navy and Marine Corps policy.

Some commenters were concerned that the new language proposed under 32 CFR 775.6(e) would allow the DON to apply CATEXs for "routine training and evaluation" and "routine military training" (existing CATEXs renumbered as #43 and #44 in this final rule) to virtually all testing and training activities, thereby circumventing Federal law. The language,

however, does not remove the requirement to demonstrate that such training and testing have no significant impacts on the human environment either individually or cumulatively. Moreover, it does not negate the DON's responsibility to obtain legally required permits and/or approvals from regulatory agencies outside of the DON, many of which have their own NEPA review obligation. Finally, if a decision is made to apply a CATEX to a proposed action even though one or more extraordinary circumstances are present, a copy of the executed CATEX decision document must be forwarded to headquarters for review before the action can be implemented. These decisions then face a higher level of scrutiny which ensures the appropriate level of NEPA analysis is completed.

To address the above comments regarding changes to 32 CFR 775.6(e), the DON will adopt the following language under 32 CFR 775.6(e) to clarify its position that application of a CATEX is inappropriate unless the action is determined not to have a significant impact on the human environment either individually or cumulatively: "A categorical exclusion (CATEX), as defined and listed in this regulation *and 40 CFR 1508.4*, may be used to exclude a proposed action from further analysis. . . Before applying a CATEX, the decision maker must consider whether the proposed action *would individually or cumulatively*: . . ." (emphasis added).

Further, in response to comments, the DON will also remove the sunset provision previously included in the proposed rule for actions falling under 32 CFR 775.6(e)(1)(v)(A). The proposed rule terminated the requirement to forward CATEXs to headquarters for actions where one or more extraordinary circumstances were present after two years from the date of this final rule. Under the final rule, CATEXs for these actions will be forwarded to the headquarters level for review with no sunset provision. The purpose of this change is to ensure the highest level of scrutiny is dedicated to those actions which impact federally protected species.

Finally, certain commenters took issue with the DON's word choice. Examples of disputed wording include the use of "context and intensity" in 32 CFR 775.6(e) and "scientifically controversial" in 32 CFR 775.6(e)(1)(ii). The consideration of "context and intensity" of an action contemplated for a CATEX where one or more extraordinary circumstances is present is simply meant to provide guidance to decision makers in determining whether an action has the potential for significant effects under 40 CFR 1508.4. As noted previously, the consideration of "context and intensity" when determining whether a CATEX is appropriate aligns with CEQ's 2010 CATEX guidance. The term "scientifically controversial" is in the DON's existing NEPA regulations and has not been altered by this rulemaking.

Interaction with the MMPA

The DON also received comments expressing concern that the DON would rely on the language changes under 32 CFR 775.6 to circumvent certain procedures, approvals, or authorizations required under the MMPA or other environmental statutes. Changes to the DON's CATEX regulations cannot negate the DON's independent legal responsibilities under other environmental statutes. Rather, the regulatory changes proffered by the DON in this rulemaking more clearly delineate the interplay between the DON NEPA regulations and the MMPA by linking the trigger for extraordinary circumstances to the specific regulatory threshold language of the MMPA. The DON has added language to 32 CFR 775.6(e)(1)(v)(A) to clarify a CATEX will not be used if potential impacts would rise to the level of requiring an Incidental Take Authorization under the MMPA, irrespective of whether an actual authorization is procured unless the DON determines, in accordance §775.6(e), and after considering context and intensity, that the proposed action would not have significant environmental effects.

Further, the language change to 32 CFR 775.6 in no way affects policy external to the DON. The proposed language does not contravene National Marine Fisheries Service (NMFS) authorization requirements or NOAA NEPA requirements. That is, the DON will still be required to seek MMPA Incidental Take Authorizations from NMFS for activities which trigger NMFS jurisdiction and NOAA's issuance of those authorizations must still comply with its NEPA procedures. The DON will work closely with NMFS to ensure the appropriate level of NEPA analysis is completed to satisfy the NEPA requirements for both agencies.

CATEX #47 (Modernization (upgrade) of range and training areas, systems, and components that support current testing and training levels and requirements)

One commenter was concerned that this proposed new CATEX could enable “later increased and potentially different uses” of DON ranges that would never undergo NEPA analysis. This CATEX covers the modernization (upgrade) of range and training areas, systems, and associated components that support *current* (emphasis added) training and testing levels and requirements. It would be used for activities such as replacing worn out infrastructure and equipment. The language of this CATEX cannot be used to satisfy NEPA obligations for increased or potentially different uses of the range or training area that would result in additional environmental impacts. No changes were made to the text of the final rule as a result of this comment.

Miscellaneous Changes

In accordance with the comments section noted above, the DON makes minor edits to the wording of its proposed rule. The DON also makes several minor edits to improve the clarity, grammar, consistency and brevity of the regulations overall including a change which deletes

language from CATEX #22 that contradicts DON's changes to extraordinary circumstances criteria regarding how to account for adverse effects on historic properties.

Thereafter, for the reasons given in the proposed rule and in this document, the DON adopts the proposed rule as a final rule, with the changes discussed in this document.

Authority for This Regulatory Action

Authorities for this rule are 5 U.S.C. 301, NEPA, and 40 CFR parts 1500-1508. Under 5 U.S.C. 301, the head of a military department may prescribe regulations for the government of the department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. As noted above, NEPA requires Federal agencies to analyze their proposed actions to determine if they could have significant environmental effects. The CEQ implementing regulations (40 CFR 1507.3) require Federal agencies to adopt supplemental NEPA implementing procedures, including agency-specific CATEXs, either in the form of agency policy or a regulation, and to provide opportunity for public review prior to adoption.

Regulatory Reviews

Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action,"

although not economically significant, under section 3(f) of Executive Order 12866.

Accordingly, it has been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more; or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. This final rule is not a major rule because it does not reach the economic threshold or have other impacts as required under the Congressional Review Act.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because it is related to agency organization, management, or personnel.

National Environmental Policy Act

The CEQ does not direct agencies to prepare a NEPA analysis before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. DON NEPA procedures assist in the fulfillment of its responsibilities under NEPA, but are not final determinations of what level of NEPA analysis is required for particular actions. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA

analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff’d*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Paperwork Reduction Act

This regulatory action does not contain a collection-of-information requirement subject to review and approval by the OMB under the Paperwork Reduction Act.

Regulatory Flexibility Act

The DON has determined that this action is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)).

Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This rule does not impose any mandates on small entities. This action addresses the DON’s internal procedures for implementing the procedural requirements of NEPA.

Executive Order 13132: Federalism

The DON has determined that this action does not contain policies with federalism or “takings” implications as those terms are defined in Executive Orders 13132 and 12630, respectively. This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action contains no Federal mandates for state and local governments and does not impose any enforceable duties on state and local governments. This action addresses only internal DON procedures for implementing NEPA.

List of Subjects in 32 CFR Part 775

Environmental impact statements.

Accordingly, the DON amends 32 CFR part 775 as follows:

**PART 775—POLICIES AND RESPONSIBILITIES FOR IMPLEMENTATION OF THE
NATIONAL ENVIRONMENTAL POLICY ACT WITHIN THE DEPARTMENT OF
THE NAVY**

1. The authority for part 775 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 4321-4361; 40 CFR parts 1500-1508.

2. Revise the heading for part 775 to read as set forth above.
3. Amend §775.6 by revising paragraphs (e) and (f) as follows:

§775.6 Planning considerations.

* * * * *

(e) A categorical exclusion (CATEX), as defined and listed in this part and 40 CFR 1508.4, may be used to satisfy NEPA, eliminating the need for an EA or an EIS. Extraordinary circumstances are those circumstances for which the DON has determined that further environmental analysis may be required because an action normally eligible for a CATEX may have significant environmental effects. The presence of one or more of the extraordinary circumstances listed in paragraph (e)(1) of this section does not automatically preclude the application of a CATEX. A determination of whether a CATEX is appropriate for an action, even if one or more extraordinary circumstances are present, should focus on the action's potential effects and consider the environmental significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts).

(1) Before applying a CATEX, the decision maker must consider whether the proposed action would individually or cumulatively:

(i) Adversely affect public health or safety;

(ii) Involve effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial;

(iii) Establish precedents or make decisions in principle for future actions that have the potential for significant impacts;

(iv) Threaten a violation of Federal, State, or local environmental laws applicable to the DON; or

(v) Involve an action that may:

(A) Have more than an insignificant or discountable effect on federally protected species under the Endangered Species Act or have impacts that would rise to the level of requiring an Incidental Take Authorization under the Marine Mammal Protection Act irrespective of whether one is procured;

(B) Have an adverse effect on coral reefs or on federally designated wilderness areas, wildlife refuges, marine sanctuaries and monuments, or parklands;

(C) Adversely affect the size, function, or biological value of wetlands and is not covered by a general (nationwide, regional, or state) permit;

(D) Have an adverse effect on archaeological resources or resources listed or determined to be eligible for listing on the National Register of Historic Places (including, but not limited to, ships, aircraft, vessels, and equipment) where compliance with Section 106 of the National Historic Preservation Act has not been resolved through an agreement executed between the DON and the appropriate historic preservation office and other appropriate consulting parties; or

(E) Result in an uncontrolled or unpermitted release of hazardous substances or require a conformity determination under standards in 40 CFR part 93, subpart B (the Clean Air Act General Conformity Rule).

(2) If a decision is made to apply a CATEX to a proposed action that is more than administrative in nature, the decision must be formally documented per existing Navy and Marine Corps policy. For actions with a documented CATEX where one or more extraordinary circumstances are present, a copy of the executed CATEX decision document (e.g., Record of CATEX or Decision Memorandum) must be forwarded for review to Navy Headquarters or Marine Corps Headquarters, as appropriate, before the action is implemented. With the exception of actions that fall under paragraph (e)(1)(v)(A) of this section, the requirement to send the documented CATEX to headquarters for review will end on January 6, 2022.

(f) Subject to the criteria in paragraph (e) of this section, the following categories of actions are excluded from further analysis under NEPA. The CNO and CMC shall determine whether a decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions must be documented in an administrative record and the format for such record.

(1) Routine fiscal and administrative activities, including administration of contracts;

(2) Routine law and order activities performed by military personnel, military police, or other security personnel, including physical plant protection and security;

(3) Routine use and operation of existing facilities, laboratories, and equipment;

(4) Administrative studies, surveys, and data collection;

(5) Issuance or modification of administrative procedures, regulations, directives, manuals, or policy;

(6) Military ceremonies;

(7) Routine procurement of goods and services conducted in accordance with applicable procurement regulations, executive orders, and policies;

(8) Routine repair and maintenance of buildings, facilities, vessels, aircraft, ranges, and equipment associated with existing operations and activities (e.g., localized pest management activities, minor erosion control measures, painting, refitting, general building/structural repair, landscaping, or grounds maintenance);

(9) Training of an administrative or classroom nature;

(10) Routine personnel actions;

(11) Routine movement of mobile assets (such as ships, submarines, aircraft, and ground assets for repair, overhaul, dismantling, disposal, homeporting, home basing, temporary reassignments; and training, testing, or scientific research) where no new support facilities are required;

(12) Routine procurement, management, storage, handling, installation, and disposal of commercial items, where the items are used and handled in accordance with applicable regulations (e.g., consumables, electronic components, computer equipment, pumps);

(13) Routine recreational and welfare activities;

(14) Alterations of and additions to existing buildings, facilities, and systems (e.g., structures, roads, runways, vessels, aircraft, or equipment) when the environmental effects will remain substantially the same and the use is consistent with applicable regulations;

(15) Routine movement, handling, and distribution of materials, including hazardous materials and wastes that are moved, handled, or distributed in accordance with applicable regulations;

(16) New activities conducted at established laboratories and plants (including contractor-operated laboratories and plants) where all airborne emissions, waterborne effluent, external ionizing and non-ionizing radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, state, and local laws and regulations;

(17) Studies, data, and information gathering that involve no permanent physical change to the environment (e.g., topographic surveys, wetlands mapping, surveys for evaluating environmental damage, and engineering efforts to support environmental analyses);

(18) Temporary placement and use of simulated target fields (e.g., inert mines, simulated mines, or passive hydrophones) in fresh, estuarine, and marine waters for the purpose of non-explosive military training exercises or research, development, test, and evaluation;

(19) Installation and operation of passive scientific measurement devices (e.g., antennae, tide gauges, weighted hydrophones, salinity measurement devices, and water quality measurement devices) where use will not result in changes in operations tempo and is consistent with applicable regulations;

(20) Short-term increases in air operations up to 50 percent of the typical operation rate, or increases of 50 operations per day, whichever is greater. Frequent use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts;

(21) Decommissioning, disposal, or transfer of naval vessels, aircraft, vehicles, and equipment when conducted in accordance with applicable regulations, including those regulations applying to removal of hazardous materials;

(22) Non-routine repair and renovation, and donation or other transfer of structures, vessels, aircraft, vehicles, landscapes, or other contributing elements of facilities listed or eligible for listing on the National Register of Historic Places;

(23) Hosting or participating in public events (e.g., air shows, open houses, Earth Day events, and athletic events) where no permanent changes to existing infrastructure (e.g., road systems, parking, and sanitation systems) are required to accommodate all aspects of the event;

(24) Military training conducted on or over nonmilitary land or water areas, where such training is consistent with the type and tempo of existing non-military airspace, land, and water use (e.g., night compass training, forced marches along trails, roads, and highways, use of permanently established ranges, use of public waterways, or use of civilian airfields);

(25) Transfer of real property from the DON to another military department or to another Federal agency;

(26) Receipt of property from another Federal agency when there is no anticipated or proposed substantial change in land use;

(27) Minor land acquisitions or disposals where anticipated or proposed land use is similar to existing land use and zoning, both in type and intensity;

(28) Disposal of excess easement interests to the underlying fee owner;

(29) Initial real estate in grants and out grants involving existing facilities or land with no significant change in use (e.g., leasing of federally owned or privately owned housing or office space, and agricultural out leases);

(30) Renewals and minor amendments of existing real estate grants for use of Government-owned real property where no significant change in land use is anticipated;

(31) Land withdrawal continuances or extensions that establish time periods with no significant change in land use;

(32) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater, storm water, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses;

(33) New construction that is similar to or compatible with existing land use (i.e., site and scale of construction are consistent with those of existing adjacent or nearby facilities) and, when completed, the use or operation of which complies with existing regulatory requirements (e.g., a building within a cantonment area with associated discharges and runoff within existing handling capacities). The test for whether this CATEX can be applied should focus on whether the proposed action generally fits within the designated land use of the proposed site;

(34) Demolition, disposal, or improvements involving buildings or structures when done in accordance with applicable regulations including those regulations applying to removal of asbestos, PCBs, and other hazardous materials;

(35) Acquisition, installation, modernization, repair, or operation of utility (including, but not limited to, water, sewer, and electrical) and communication systems (including, but not limited to, data processing cable and similar electronic equipment) that use existing rights of way, easements, distribution systems, and facilities;

(36) Decisions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment is not used to prevent or control environmental impacts;

(37) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

(38) Relocation of personnel into existing federally owned or commercially leased space that does not involve a substantial change affecting the supporting infrastructure (e.g., no increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase);

(39) Pre-lease upland exploration activities for oil, gas, or geothermal reserves, (e.g., geophysical surveys);

(40) Installation of devices to protect human or animal life (e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas);

(41) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat when no substantial site preparation is involved;

(42) Temporary closure of public access to DON property to protect human or animal life;

(43) Routine testing and evaluation of military equipment on a military reservation or an established range, restricted area, or operating area; similar in type, intensity, and setting, including physical location and time of year, to other actions for which it has been determined, through NEPA analysis where the DON was a lead or cooperating agency, that there are no significant impacts; and conducted in accordance with all applicable standard operating procedures protective of the environment;

(44) Routine military training associated with transits, maneuvering, safety and engineering drills, replenishments, flight operations, and weapons systems conducted at the unit

or minor exercise level; similar in type, intensity, and setting, including physical location and time of year, to other actions for which it has been determined, through NEPA analysis where the DON was a lead or cooperating agency, that there are no significant impacts; and conducted in accordance with all applicable standard operating procedures protective of the environment;

(45) Natural resources management actions undertaken or permitted pursuant to agreement with or subject to regulation by Federal, state, or local organizations having management responsibility and authority over the natural resources in question, including, but not limited to, prescribed burning, invasive species actions, timber harvesting, and hunting and fishing during seasons established by state authorities pursuant to their state fish and game management laws. The natural resources management actions must be consistent with the overall management approach of the property as documented in an Integrated Natural Resources Management Plan (INRMP) or other applicable natural resources management plan;

(46) Minor repairs in response to wildfires, floods, earthquakes, landslides, or severe weather events that threaten public health or safety, security, property, or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management-approved condition (i.e., the previous state) without intervention. Covered activities must be completed within one year following the event and cannot include the construction of new permanent roads or other new permanent infrastructure. Such activities include, but are not limited to: repair of existing essential erosion control structures or installation of temporary erosion controls; repair of electric power transmission infrastructure; replacement or repair of storm water conveyance structures, roads, trails, fences, and minor facilities; revegetation; construction of protection fences; and removal of hazard trees, rocks, soil, and other mobile debris from, on, or along roads, trails, or streams;

(47) Modernization (upgrade) of range and training areas, systems, and associated components (including, but not limited to, targets, lifters, and range control systems) that support current testing and training levels and requirements. Covered actions do not include those involving a substantial change in the type or tempo of operation, or the nature of the range (i.e., creating an impact area in an area where munitions had not been previously used);

(48) Revisions or updates to INRMPs that do not involve substantially new or different land use or natural resources management activities and for which an EA or EIS was previously prepared that does not require supplementation pursuant to 40 CFR 1502.9(c)(1); and

(49) DON actions that occur on another Military Service's property where the action qualifies for a CATEX of that Service, or for actions on property designated as a Joint Base or Joint Region that would qualify for a CATEX of any of the Services included as part of the Joint Base or Joint Region. If the DON action proponent chooses to use another Service's CATEX to cover a proposed action, the DON must obtain written confirmation the other Service does not object to using its CATEX to cover the DON action. The DON official making the CATEX determination must ensure the application of the CATEX is appropriate and that the DON's proposed action was of a type contemplated when the CATEX was established by the other Service. Use of this CATEX requires preparation of a Record of CATEX or Decision Memorandum.

Dated: November 27, 2019.

D. J. Antenucci,

Commander,

Judge Advocate General's Corps,

U. S. Navy,

Federal Register Liaison Officer.

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